

IN THE MATTER OF:)	
)	
Portland Cement Company Site 5)	ADMINISTRATIVE ORDER ON
Salt Lake County, Utah)	CONSENT
)	
Proceeding under Section 122(g)(4) of the)	U.S. EPA Docket No. CERCLA-08-
Comprehensive Environmental Response,)	0004-0011
Compensation, and Liability Act of 1980, as)	
amended, 42 U.S.C. 9622(g)(4))	
)	

I. JURISDICTION

1. This Administrative Order on Consent (“Consent Order” or “Order”) is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9622(g)(4), to reach settlements in actions under Section 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency (“EPA”) by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the undersigned by EPA Delegation No. 14-14-E.

2. This Order is issued to the Trusts and persons identified in Appendix A (“Respondents”). Each Respondent agrees to undertake all actions required by this Consent Order. Each Respondent further consents to and will not contest EPA’s jurisdiction to issue this Consent Order or to implement or enforce its terms.

3. EPA and Respondents agree that the actions undertaken by Respondents in accordance with this Consent Order do not constitute an admission of any liability by any Respondent. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the Statement of Facts or Determinations contained in Sections IV and V, respectively, of this Consent Order.

II. STATEMENT OF PURPOSE

4. By entering into this Consent Order, the mutual objectives of the Parties are:
- a. to reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows Respondents to provide valuable consideration to EPA to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a number of potentially responsible parties from further involvement at the Site; and

c. to obtain settlement with Respondents for their fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by other persons; and

d. to provide for full and complete contribution protection for Respondents with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, the following definitions shall apply:

a. "CKD" shall mean cement kiln dust.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "CERCLIS" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act Information System.

d. "Consent Order" or "Order" shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, the Order shall control.

e. "Day" shall mean a calendar day. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

f. "EE/CA" shall mean an Engineering Evaluation/Cost Analysis.

g. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities.

h. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

i. "Fair Market Value" shall mean the price at which the Property would change hands between a willing buyer and a willing seller under actual market conditions, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

j. "Federal Lien" shall mean the federal lien provided under Section 107(l) of CERCLA (42 U.S.C. § 9607(l)).

k. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9507(2). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

l. "Net Sales Proceeds" shall mean the total value of all consideration received by Respondents for each Transfer less closing costs limited to those reasonably incurred and actually paid by Respondents associated with the Transfer of the Property.

m. "NPL" shall mean the National Priorities List.

n. "Paragraph" shall mean a portion of this Consent Order identified by an Arabic numeral.

o. "Parties" shall mean EPA and the Respondents.

p. "Property" shall mean the real property owned by Respondent Trusts, and which consists of two irregular fenced parcels encompassing approximately 16.5 acres located within a 57.7 acre parcel in Section 10, Township 1 North, Range 1 West, SLB&M, Davis County, Utah. The Property is more generally depicted on the map attached hereto as Appendix B.

q. "RCRA" shall mean the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*

r. "Respondents" shall mean the Respondent Trusts and Respondent Trustees listed in Appendix A.

s. "Response costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

t. "Section" shall mean a portion of this Consent Order identified by a Roman numeral.

u. "Site" shall mean Portland Cement Company Site 5, encompassing the Property.

v. "Transfer" shall mean each sale, assignment, transfer or exchange by Respondents (or their successors) of the Property, or any portion thereof, where title to the Property (or any portion or interest thereof) is transferred and Fair Market Value is received in consideration. A Transfer does not include a transfer pursuant to an inheritance or a bequest.

w. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

IV. STATEMENT OF FACTS

EPA has made the following findings of fact:

6. The Site is located on undeveloped land surrounded by salt flats in Davis County, Utah at approximately 2500 West just south of Cudahy Lane and east of the Jordan River. The Site is one of five sites in Utah on which cement kiln dust ("CKD") and refractory brick from the former Portland Cement Company Plant in Salt Lake City, Utah, were dumped. In 1994, EPA reached a settlement with Lone Star Industries, the then current owner and operator of the former Portland Cement Plant, which provided a financial settlement to EPA with respect to the five CKD dump sites in Utah.

The two largest sites were listed in 1986 on the NPL under the name "Portland Cement, Kiln Dust 2 & 3" and site identification number UTD980718670. The three smaller sites, including the Site, were listed on CERCLIS under the name "Portland Cement Sites 1, 4 and 5" and site identification number UTD980952832.

Sometime in 1981, Lone Star Industries, which operated the former Portland Cement Plant in Salt Lake City, Utah, dumped CKD and refractory brick on the Site. The CKD is distributed unevenly in piles of varying height around the Site. The quantity of CKD material at the Site is estimated to be approximately 42,500 to 68,000 cubic yards.

7. Hazardous substances contained in CKD and refractory brick have been or threaten to be released at or from the Site.

8. As a result of EPA's finding that hazardous substances have been or threaten to be released at or from Site, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future. In 1993, EPA performed a removal action at the Site by fencing the Site to preclude access. EPA subsequently performed a non-time critical removal action at the Site, and in 2001, EPA completed an EE/CA encompassing the Site and Portland Cement Sites 1 and 4.

9. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with the Site.

10. Respondent Trusts are the current owners of the Site. Respondents represent and for purposes of this Order EPA accepts, that neither the Respondent Trusts nor the Respondent Trustees contributed to the hazardous substances at the Site or arranged for the disposal of the hazardous substances on the Site.

11. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by other

persons is \$3.3 Million. The payments required to be made by Respondents pursuant to this Consent Order is a minor portion of this total amount.

V. DETERMINATIONS

12. Based upon the Statement of Facts set forth above and on the administrative record for this Site, EPA has determined that:

- a. The Site is a “facility” as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. Each Respondent is a “person” as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- c. Each Respondent is an owner of a facility within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), and each Respondent is a “potentially responsible party” within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).
- d. There has been an actual or threatened “release” of a “hazardous substance” from the Site as those terms are defined in Section 101(22) and (14) of CERCLA, 42 U.S.C. § 9601(22) and (14).
- e. The actual or threatened “release” caused the incurrence of response costs.
- f. Prompt settlement with each Respondent is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).
- g. This Consent Order involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).
- h. Respondents are eligible for a *de minimis* settlement pursuant to Section 122(g)(1)(B) of CERCLA, 42 U.S.C. § 9622(g)(1)(B).

VI. ORDER

13. Based upon the administrative record for the Site and the Statement of Facts and Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby AGREED TO AND ORDERED:

VII. PAYMENT

14. Within 30 days after the effective date of this Consent Order, the Respondents shall pay to the EPA Hazardous Substance Superfund the total sum of Seventy-Five Thousand Dollars (\$75,000.00).

15. In addition to the payment described under Paragraph 14, Respondents shall pay to EPA a percentage of the Net Sales Proceeds of any Transfer of the Property as follows:

- a. Payment of Net Sales Proceeds to EPA shall be made according to the following schedule:

50% of Net Sales Proceeds if the Transfer occurs in the first calendar year following completion of remediation;

62.5% of Net Sales Proceeds if the Transfer occurs in the second calendar year following completion of remediation;

75% of Net Sales Proceeds if the Transfer occurs in the third calendar year following completion of remediation

90% of Net Sales Proceeds if the Transfer occurs thereafter.

- b. Payment of Net Sales Proceeds as provided hereinabove shall be made to EPA within 15 days of the effective date of the Transfer of the Property.
- c. At least 30 days prior to any such Transfer, Respondents shall notify EPA of the proposed transfer, which notice shall include a description of the property to be sold, the identity of the purchaser, the terms of the transfer, the consideration to be paid, and a copy of the Transfer agreement. The proposed sales price must be at least equal to 75% of the Fair Market Value of the Property based upon an appraisal obtained within 1 year of the Transfer. Respondents shall notify EPA of the completion of the Transfer within 10 days of the date of closing and shall include with such notification a copy of the closing binder, including final executed documentation for the conveyance and documentation sufficient to show the total value of all consideration received by Respondents for each Transfer, the amount of the proceeds of the Transfer, the closing costs incurred and actually paid by Respondents, the report of an appraisal paid for by Respondents, performed by an appraiser satisfactory to the Parties, upon appraisal assumptions satisfactory to the Parties, a tax statement showing the assessed valuation of the Property for each of the three years immediately preceding the Transfer, and a work sheet setting forth the Net Sales Proceeds and the amount payable to EPA.
- d. In the event of a Transfer of the Property or any portion thereof, Respondents shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Consent Decree, except if EPA and Respondents modify this Order in writing.

16. Until the Property is Transferred, Respondents shall:

- a. Pay all taxes and assessments due on the Property to any federal, state or local government;
- b. Maintain the Property in its present condition; provided, however, that Respondents may alter the condition of the Property if required to do so by law;
- c. Not grant, suffer, or permit any mortgage, lien, or other encumbrance upon the Property.
- d. Beginning on the first anniversary date of the effective date of this Order, Respondents shall provide certification that it has complied with the terms of this Paragraph 16.

17. Prior to Respondents' receipt of notice from EPA that response action construction is complete at the Site, Respondents may only Transfer the Property with the prior written approval of EPA. Following Respondents' receipt of notice from EPA that response action construction is complete at the Site, Respondents shall use their best efforts to Transfer the Property.

18. Respondents shall not sell, assign, transfer or exchange the Property except by means of a Transfer.

19. Respondents' payments under this Section VII. include an amount for: a) past response costs incurred at or in connection with the Site; b) projected future response costs to be incurred at or in connection with the Site; and c) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any other person, will exceed the estimated total response costs upon which Respondents' payments are based.

20. Payments by Respondents to EPA hereunder shall be made by FedWire Electronic Funds Transfer in accordance with the current EFT procedures to be provided to Respondents by EPA Region 8, and shall be accompanied by a statement identifying the name and address of the party making payment, the site name, the EPA Region and Site/Spill ID Number 08-9C, and the EPA docket number for this action.

The total amount to be paid by Respondents pursuant to this Section VII shall be deposited by EPA in the Portland Cement Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

21. At the time of making a payment to EPA under this Section VII, Respondents shall send notice to EPA that such payment has been made. Such notice shall be sent to:

Cost Recovery Program Manager
EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202

VIII. FAILURE TO MAKE PAYMENT

22. If Respondents fail to make full payment within the times required by Paragraphs 14 and 15, Respondents shall pay Interest on any unpaid balance. In addition, if Respondents fail to make full payment as required by Paragraphs 14 or 15, the United States may, in addition to any other available remedies or sanctions, bring an action against Respondents seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), for failure to make timely payment.

IX. RELEASE OF NOTICE OF FEDERAL LIEN

23. Within 30 days after EPA receives payment of the percentage of the Net Sales Proceeds from the Transfer of the Property as provided in Paragraph 15, EPA shall file a Release of Notice of Federal Lien in the Recorder's Office of Davis County, releasing the Federal Lien on the Property.

IX. CERTIFICATION OF RESPONDENTS

24. By signing this Consent Order, each Respondent Trustee certifies, individually, that, to the best of his knowledge and belief, he:

a. has conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in his possession, or in the possession of his employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. has and will comply fully with any and all EPA requests for information regarding the Site pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

X. COVENANT NOT TO SUE BY UNITED STATES

25. In consideration of the payments that will be made by Respondents under the terms of this Consent Order, and except as specifically provided in Section XI (Reservations of Rights by United States), the United States covenants not to sue or take

administrative action against any of the Respondents pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, and Section 7003 of RCRA relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect for each Respondent upon receipt of Respondents' payments as required by Section VII. With respect to each Respondent, individually, this covenant not to sue is conditioned upon:

- a) the satisfactory performance by Respondents of all obligations under this Consent Order; and
- (b) the veracity of the information provided to EPA by Respondents relating to Respondents' involvement with the Site. This covenant not to sue extends only to Respondents and does not extend to any other person.

XI. RESERVATIONS OF RIGHTS BY UNITED STATES

26. The United States reserves, and this Consent Order is without prejudice to, all rights against Respondents with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 25. Notwithstanding any other provision of this Consent Order, the United States reserves all rights against Respondents with respect to:

- a. liability for failure to meet a requirement of this Consent Order;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability based upon the ownership or operation of the Site, or upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Order by Respondents.
- e. any liability as a result of failure to exercise due care with respect to hazardous substances at the Site; or
- f. any liability resulting from exacerbation by Respondents of the release or threat of release of hazardous substances from the Site;

27. Notwithstanding any other provision in this Consent Order, the United States reserves, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against any individual Respondent seeking to compel that Respondent to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if information is discovered after the date of this Consent Order which indicates that such Respondent no longer qualifies as a *de minimis* party at the Site.

XII. COVENANT NOT TO SUE BY RESPONDENTS

28. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Consent Order including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of Utah, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 30 and Paragraph 32, these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 26 (c) or (d) or Paragraph 27, but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

29. Nothing in this Consent Order shall be deemed to constitute preauthorization or approval of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

30. Respondents agree not to assert any claims or causes of action (including claims for contribution under CERCLA) that they may have for all matters relating to the Site against each other or any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person if such person asserts or has asserted a claim or cause of action relating to the Site against such Respondent.

XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

31. Except as provided in Paragraph 30, nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Order. Except as provided in Paragraph 30, the United States and Respondents each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

32. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the

principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue included in Paragraph 25.

33. The Parties agree that each Respondent is entitled, as of the effective date of this Consent Order, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), for “matters addressed” in this Consent Order. The “matters addressed” in this Consent Order are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person.

XIV. ACCESS AND INSTITUTIONAL CONTROLS

34. Commencing upon the effective date of this Consent Order, Respondents agree to provide the United States, the State of Utah and their representatives, including EPA, Utah Department of Environmental Quality, and their contractors with access at all reasonable times to the Site, or such other property owned by Respondent for the purposes of taking response actions, including, but not limited to, the removal of hazardous substances from the Site.

35. Respondents shall refrain from using the Site in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the response actions to be performed at the Site.

36. If EPA determines that land/water restrictions in the form of state, or local laws, regulations, ordinances or other governmental controls are needed to implement response activities at the Site, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Respondents shall cooperate with EPA’s or the State of Utah’s efforts to secure such governmental controls.

XV. PARTIES BOUND

37. This Consent Order shall apply to and be binding upon EPA and upon Respondents and their beneficiaries, successors and assigns. Any change in ownership or corporate or other legal status of a Respondent, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondent’s responsibilities under this Consent Order. Each signatory to this Consent Order certifies that he or she is authorized to enter into the terms and conditions of this Consent Order and to execute and bind legally the party represented by him or her.

XVI. DUE CARE AND COOPERATION

38. Nothing in this Consent Order shall be construed to relieve Respondents of Respondents’ duty to exercise due care with respect to the hazardous substances at the Site or Respondents’ duty to comply with all applicable local, State, and federal laws and regulations. This Consent Order in no way constitutes a finding by EPA as to the risks to

human health and the environment which may be posed by contamination at the Site nor constitutes any representation by EPA that the Site is fit for any particular purpose.

39. Respondents agree to cooperate fully with EPA in the implementation of response actions at the Site and further agree not to interfere with such response actions. In the event Respondents become aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. '9603, or any other law, immediately notify EPA of such release or threatened release.

XIII. NOTICES AND SUBMISSIONS

40. Notices and submissions. Any notice, including correspondence, required or made with respect to this Decree, shall be in writing, effective upon receipt, and sent to the following persons:

For EPA:

Site Attorney
Portland Cement Superfund Site
Mail Code: 8ENF-L
U.S. Environmental Protection Agency
Region 8
999-18th Street, Suite 300
Denver, Colorado 80202

Remedial Project Manager
Portland Cement Superfund Site
Mail Code: 8EPR-SR
U.S. Environmental Protection Agency
Region 8
999-18th Street, Suite 300
Denver, Colorado 80202

For Respondents
Respondent Trustee
H. Wayne Decker,
4052 Parkview Drive
Salt Lake City, Utah 84124

Respondent Trustee
Ashby S. Decker,
4170 Neptune Drive
Salt Lake City, Utah 84124

XVII. INTEGRATION/APPENDICES

41. This Consent Order and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Order. The following appendices are attached to and incorporated into this Consent Order:

“Appendix A” is the list of Respondents.

“Appendix A-1” is a copy of the Trust Agreement dated April 12, 1967

“Appendix A -2” is a copy of the Trust Agreement dated September 2, 1980.

“Appendix B” is the map of the Property.

XVIII. PUBLIC COMMENT

42. This Consent Order shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. § 9622(i)(3), EPA may withdraw or withhold its consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper, or inadequate.

XIX. ATTORNEY GENERAL APPROVAL

43. The Attorney General or his designee has approved the settlement embodied in this Consent Order in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. § 9622(g)(4).

XX. EFFECTIVE DATE

44. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondents that the public comment period pursuant to Paragraph 42 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Consent Order.

IT IS SO ORDERED AND AGREED THIS 28TH DAY OF April, 2004.

FOR THE UNITED STATES OF AMERICA:

SIGNED

SHARON KERCHER
Director Technical Enforcement Program
Superfund and RCRA
Office of Enforcement, Compliance and Environmental Justice
EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202

SIGNED

MICHAEL T. RISNER
Director of Legal Enforcement
Office of Enforcement, Compliance and Environmental Justice
EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202

THE UNDERSIGNED RESPONDENTS enter into this Consent Order in the matter of U.S. EPA Docket No. **CERCLA-08-2004-0011**, relating to Portland Cement Site 5, in Davis County, Utah:

FOR RESPONDENTS:

Trust established by Agreement dated April 12, 1967:

SIGNED _____

H. Wayne Decker, Trustee
Address: 4052 Parkview Drive
Salt Lake City, Utah 84124

March 30, 2004 _____

[Date]

Trust established by Agreement dated September 2, 1980:

SIGNED _____

Ashby S. Decker, Trustee
Address: 4170 Neptune Drive
Salt Lake City, Utah 84124

March 26, 2004 _____

[Date]

APPENDIX A
Respondent Trusts and Trustees

1. That certain Trust established by Agreement dated April 12, 1967, a copy of which is attached hereto as Appendix A-1, and the sole surviving Trustee under said Trust: H. Wayne Decker.
2. That certain Trust established by Agreement dated September 2, 1980, a copy of which (together with an Assignment dated November 10, 1981, which changed the percentage interests of the beneficiaries) is attached hereto as Appendix A-2, and the sole surviving Trustee under said Trust: Ashby S. Decker.

APPENDIX A-1
[Trust Agreement dated April 12, 1967]

APPENDIX A-2
[Trust Agreement dated September 2, 1980]

APPENDIX B

[Map of Site and underlying Property consisting of two irregular fenced parcels encompassing approximately 16.5 acres within a 57.7acre parcel located in Section 10,

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE
CONTACT THE REGIONAL HEARING CLERK.**

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON JUNE 2, 2004.